

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE**

MICHELE HARRIS)	
)	
Plaintiff,)	C.A. NO.
)	
v.)	JURY TRIAL DEMANDED
)	
WILMINGTON TRUST)	
CORPORATION,)	
)	
Defendant.)	

COMPLAINT

INTRODUCTION

1. This is a Complaint brought pursuant to the *Family and Medical Leave Act of 1993* (“FMLA”), 29 U.S.C. § 2601 *et seq.* and 19 Del. C. §723, §724, §726.

PARTIES

2. Plaintiff, Michele Harris (hereinafter “Plaintiff”), was at all times relevant to this Complaint, a resident of the State of Delaware, residing at 104 W. Delaware Avenue, Gwinhurst, Wilmington, Delaware 19809. Plaintiff is a female who suffers from chronic sinusitis, bronchitis, and upper respiratory problems.

3. Defendant, Wilmington Trust Corporation (hereinafter “Defendant”), is and was at all times relevant to this Complaint, a Delaware corporation with its principle place of business at 1201 North Market Street, Wilmington, Delaware 19801.

JURISDICTION AND NATURE OF ACTION

4. The jurisdiction of this Court is founded on the existence of a question arising under federal statutes. This action arises under the *Family and Medical Leave Act of 1990*, 29 U.S.C. § 2601 *et seq.* The jurisdiction of this Court is invoked to secure protection and redress

deprivation of rights secured by federal law, which prohibits discrimination against employees and/or retaliation against employees for exercising such rights.

5. Jurisdiction is also founded on the existence of a question arising under state law. This action arises under 19 Del. C. §723, §724, §726. The jurisdiction of this Court is invoked to secure protection and redress deprivation of rights secured by state law, which prohibits discrimination against employees on account of a disability.

6. Plaintiff's state law claims exist under the principles of pendant and supplemental jurisdiction and 28 U.S.C. §1367.

7. Injunctive and declaratory relief, damages and other appropriate legal and equitable relief are sought pursuant to 42 U.S.C. §2000(e), (f), and (g).

8. For all relevant times herein, Defendant employed fifty (50) or more employees for each working day in each of twenty (20) or more calendar weeks within seventy-five (75) miles of its principle place of business at which Plaintiff worked. Accordingly, Defendant meets the definition of "employer" under the FMLA.

9. Since March 2001, Plaintiff was employed by Defendant and maintained a full-time schedule of at least forty (40) hours per week. Accordingly, at all relevant times herein, Plaintiff was an "eligible employee" under the FMLA.

FACTUAL BACKGROUND

10. Plaintiff began her employment with Defendant in March 2001 as a Commercial Loan Specialist.

11. Plaintiff always received satisfactory or excellent performance reviews. In 2004, Plaintiff earned a Shining Star Award for her work performance on the Geo Coding Project.

12. In Plaintiff's most recent performance review dated March 1, 2006, Plaintiff was rated as "the highest processor on the team" and received an overall performance rating of "Meets Objectives."

13. Plaintiff suffers from chronic sinusitis, bronchitis, and upper respiratory problems which occasionally caused her to miss or be late to work.

14. In December 2005, Plaintiff applied for and was granted intermittent FMLA leave.

15. On a frequent basis, Plaintiff was harassed for her use of FMLA. For example, on January 26, 2006, Plaintiff was written up for not responding to an e-mail that had been sent to her work account while she was out on FMLA. In the warning, Plaintiff was instructed to "Open e-mails on a daily basis and respond in a timely manner."

16. On or around March of 2006, Plaintiff complained to her immediate supervisor, Deanna Rybicki (hereinafter "Ms. Rybicki") that her performance review was late.

17. When Plaintiff received her review on March 1, 2006, Karen Thurson (hereinafter "Ms. Thurson"), the Division Manager, had already signed off on it although pursuant to Wilmington Trust policy, Ms. Thurson was not to sign Plaintiff's review until Plaintiff had reviewed it and written in her own comments. Pursuant to Defendant's policy, Plaintiff was also required to do a self-review prior to the issuance of her performance report, but Plaintiff was not given this opportunity.

18. Additionally, Ms. Rybicki, told Plaintiff not to write her comments into the review boxes provided but to attach her comments on separate sheets of paper.

19. Shortly after her review was issued, Plaintiff complained to Ms. Thurson about the violations of company policy and procedure regarding her review. Plaintiff also complained that Ms. Rybicki called her a “bitch.”

20. At this time, Plaintiff also complained about the manner in which her write-ups had been handled. Pursuant to company policy, a Level 1 write-up was supposed to be erased after six (6) months, a Level 2 write-up was supposed to be erased after twelve (12) months, and a Level 3 write-up was supposed to be erased after eighteen (18) months. Defendant did not follow this procedure, and Plaintiff was not able to apply for other positions within the company.

21. On April 12, 2006, Plaintiff’s doctor placed her on Lexapro for depression.

22. On May 11, 2006, Plaintiff took the Lexapro along with her respiratory medications. The Lexapro interacted with her respiratory medications and made Plaintiff very sick with symptoms of nausea, diarrhea, and drowsiness.

23. Plaintiff called Defendant and explained that she was sick and could not come to work.

24. The following day, on May 12, 2006, Plaintiff returned to work.

25. On May 15, 2006, Ed Emmi (hereinafter “Mr. Emmi”), the Human Resources representative, terminated Plaintiff for violating the attendance policy on May 11, 2006.

26. Plaintiff’s previous unexcused absence had occurred seven (7) months prior when she did not have FMLA.

27. On May 17, 2006, Plaintiff’s doctor wrote a note explaining that the anti-depressant had interfered with her sinus medications, thus her absence on May 11, 2006 was FMLA-related and should have been covered under the FMLA.

28. Plaintiff delivered the note to Defendant. Mr. Emmi told Plaintiff that her termination was final.

29. Following her termination, Plaintiff explained the situation and complained in a letter addressed to Ted T. Cccala, Chairman and CEO; Bob Harra, Bank President; Bill North, VP Division Manager of Regional Banking; Andrea Johnson, FMLA coordinator (hereinafter "Ms. Johnson"); Mr. Emmi; Karen Thuresson, Division Manager of Risk Management and Operations; and Ms. Rybicki.

30. Plaintiff also left several voicemails for Ms. Johnson.

31. Plaintiff received no response to her letter or her phone calls.

32. After her termination by Wilmington Trust, it took Plaintiff almost a year to find a full-time job, and she was required to work at a part-time job at a significantly lower salary than what she earned at Defendant.

33. Plaintiff's supervisor, Ms. Sweeney, the Quality Improvement Director, overly scrutinized Plaintiff's performance, regularly threatened her with disciplinary actions, and subjected Plaintiff to disparate treatment with regards to the Defendant's policies concerning "Makeup Time and Overtime."

COUNT I
Violation of the Family and Medical Leave Act

34. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 33 by reference as if specifically set forth herein.

35. For all relevant times herein, Defendant employed fifty (50) or more employees for each working day in each of twenty (20) or more calendar weeks within seventy-five (75) miles of its principle place of business at which Plaintiff worked. Accordingly, Defendant meets the definition of "employer" under the FMLA.

36. Since March 2001, Plaintiff was employed by Defendant and maintained a full-time schedule of at least forty (40) hours per week. Accordingly, at all relevant times herein, Plaintiff was an “eligible employee” under the FMLA.

37. The practices employed by Defendant violate Plaintiff’s rights under the *Family and Medical Leave Act* (“FMLA”) were intentional and were done with malice and/or reckless indifference to the federally-protected rights of Plaintiff and were designed to further injure Plaintiff.

38. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer, loss of employment, loss of income, loss of other employment benefits, and has suffered, and continues to suffer, distress, humiliation, great expense, embarrassment, and damages to her reputation.

COUNT II
Violation of 19 Del. C. §723, §724, §726

39. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 38 by reference as if specifically set forth herein.

40. Defendant’s aforesaid actions constituted discrimination against Plaintiff on the basis of an actual and/or perceived disability in violation of 19 Del. C. §723, §724, §726.

41. Defendant’s violation of Plaintiff’s rights under 19 Del. C. §723, §724, §726 was intentional and therefore was done with malice and reckless indifference to the state-protected rights of Plaintiff and was designed to further injure Plaintiff.

42. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer, loss of employment, loss of income, loss of other employment benefits, and has suffered, and continues to suffer, distress, humiliation, great expense, embarrassment, and damages to her reputation.

COUNT III
Disability Discrimination

43. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 42 by reference as if specifically set forth herein.

44. The practices of Defendant, as complained of above, had the effect of depriving Plaintiff of equal employment opportunity and otherwise adversely affected her employment because of an actual and/or perceived disability. The practices of Defendant were intentional and therefore were done with malice and reckless indifference to the federally-protected and state-protected rights of Plaintiff and were designed to further injure Plaintiff.

45. Defendant failed to provide reasonable accommodations to Plaintiff based upon Plaintiff's disability.

46. The practices of Defendant, as complained of above, caused Plaintiff to experience conscious pain and suffering and other emotional harm.

47. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer, loss of employment, loss of income, loss of other employment benefits, and has suffered, and continues to suffer, distress, humiliation, great expense, embarrassment, and damages to her reputation.

COUNT IV
Retaliation

48. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 47 by reference as if specifically set forth herein.

49. The practices of Defendant, as complained of above, had the effect of depriving Plaintiff of equal employment opportunities or otherwise adversely affected her employment through repeated acts of retaliation directed toward Plaintiff, for complaining to her supervisor

about Defendant's actions towards her, for complaining repeatedly to Human Resources about the disparate treatment and for complaining repeatedly when she was not treated similarly to other similarly situated co-workers.

50. The practices employed by Defendant to retaliate against Plaintiff were intentional and were done with malice and/or reckless indifference to the federally-protected rights of Plaintiff and were designed to further injure Plaintiff.

51. The practices of Defendant, as complained of above, caused Plaintiff to experience conscious pain and suffering and other emotional harm.

52. As a direct and proximate result of said acts, Plaintiff has suffered and continues to suffer, loss of employment, loss of income, loss of other employment benefits, and has suffered, and continues to suffer, distress, humiliation, great expense, embarrassment, and damages to her reputation.

COUNT V

Breach of the Covenant of Good Faith and Fair Dealing

53. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1 through 58 by reference as if specifically set forth herein.

54. The actions of Defendant constitute a violation of the Covenant of Good Faith and Fair Dealing implicit in every employment agreement.

55. Defendant breached the Covenant of Good Faith and Fair Dealing to Plaintiff by terminating her based upon an actual and/or perceived disability and/or based upon her limitations due to her disability and/or based upon retaliatory motives.

56. Defendant's discrimination was willful, wanton, and malicious. As a result, Plaintiff is entitled to an award of compensatory and punitive damages.

57. The above-stated damages were not the result of any act or omission on the part of the Plaintiff.

WHEREFORE, Plaintiff Michele Harris, respectfully requests that this Court enter judgment in her favor and against Defendant, Wilmington Trust Corporation:

- (a) Declaring that the conduct engaged in by the Defendant to be in violation of Plaintiff's rights;
- (b) Issuing a judgment in Plaintiff's favor ordering Defendant to provide appropriate back pay with pre- and post-judgment interest, in amounts to be determined at trial, and other affirmative relief necessary including liquidated damages to eradicate the effects of Defendant's unlawful employment practices;
- (c) Issuing a judgment in Plaintiff's favor ordering Defendant to provide compensation for non-pecuniary losses, including, but not limited to, pain, suffering, and humiliation, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of Defendant's unlawful employment practices;
- (d) Issuing a judgment in Plaintiff's favor ordering Defendant to provide compensation for past and future pecuniary losses including liquidated damages, in amounts to be determined at trial;
- (e) Issuing a judgment in Plaintiff's favor ordering Defendant to pay punitive damages for its malicious and/or reckless conduct in amounts to be determined at trial;

- (f) Issuing a judgment in Plaintiff's favor ordering the Defendant to pay the costs of reasonable attorneys' fees and expenses and the costs of this litigation; and
- (g) Granting such other further relief as this Court deems just and proper.

MARGOLIS EDELSTEIN



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Dated: July 20, 2007

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Michelle Harris

DEFENDANTS

Wilmington Trust Corporation

(b) County of Residence of First Listed Plaintiff New Castle
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Margolis Edelstein
Herbert W. Mandros
750 S. Madison Street, Suite 102
Wilmington, DE 19801 (302) 888-1112

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgement

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

FMLA

Brief description of cause:

Violation of FMLA Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/20/07

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 07 - 453

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

7/20/07
(Date forms issued)

x Veronica Monaghan
(Signature of Party or their Representative)

x Veronica Monaghan
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action